

in our proceeding to establish regulatory fees for FY 1995.³⁰ Of course, RMD and any other licensee may surrender or modify their licenses and other authorizations in order to minimize their regulatory fee burden.

2. Marine (Coast and Ship Stations)

73. Numerous formal and informal commenters, including the United States Coast Guard, raise concerns about our proposal to collect a regulatory fee from licensees in the marine service, including licensees using radio equipment voluntarily installed on small vessels, such as recreational boats.³¹ These parties contend that a waiver, or exemption, for vessels that voluntarily carry radio equipment would enhance maritime safety and promote the public interest. As support, the parties state that marine radio provides a vital link between recreational boaters and emergency safety entities, as well as an important source for weather and navigational information. Further, they contend that the regulatory fee, added to the existing application fee, will act as a substantial disincentive for recreational boaters to carry, maintain and operate marine communications equipment.

74. We recognize that radio communication between recreational boaters and various emergency safety entities provides an important public service. However, our authority to waive a fee requirement is limited to "narrow" and "compelling circumstances." 2 FCC Rcd 947, 961 (1987); H.R. 3128, H.R. Rep. No. 453, 99th Cong., 1st Sess. 39-42, 423 (1985). In view of this strict Congressional limitation, we do not believe that a "blanket waiver" granted to boaters operating marine radios is permissible, absent legislative amendment.

³⁰ RMD asks that we waive our requirement that SMR licensees pay their fees in advance and, instead, permit them to submit these fees on an annual basis. RMD contends that the overall fees that may be imposed on SMR systems are not "small" and, therefore, fall outside the category of fees that Congress authorized us to collect in advance. We decline to allow RMD to pay its fees on an annual basis because Congress specifically indicated that fees for private radio services licensees, including licensees of SMR systems, would be considered small and subject to the payment of fees in advance. See H.R. Rep. No. 207, 102d Cong., 1st Sess. 11 (1991).

³¹ In addition to the USCG, the commenters include the National Marine Electronics Association, Radio Technical Commission for Maritime Services, State of Nevada, Division of Wildlife and the United States Power Squadrons. We also received and considered informal comments filed by numerous parties concerned about the regulatory fee required from recreational boaters.

3. General Mobile Radio Service

75. The Personal Radio Steering Group (PRSG) requests that we lower the annual fee for licensees in the General Mobile Radio Service (GMRS). PRSG states that, because the Schedule of Regulatory Fees does not explicitly include a fee for GMRS, we have authority to reduce its fee. Moreover, PRSG contends that the service should be subject to a lower fee than that for other shared use services because it is intended primarily for personal communications, similar to the Amateur Radio Service.

76. We agree with PRSG that section 9(g)'s fee schedule contains no explicit terms regarding the GMRS. However, that section does require the payment of a fee by "shared use" services in the private radio service. GMRS is within that category of service and was explicitly mentioned in the House Report as a service that would be subject to a fee. Therefore, we conclude that GMRS licensees are subject to a \$7.00 fee for each year of the license term, payable in advance upon the filing of a GMRS application. We decline to rule on the merits of PRSG's argument that its fees should be lowered because, as discussed above, we conclude that Congress for FY 1994 intended us to assess fees in accordance with its Schedule.

B. Mass Media Services

1. Broadcast Stations

77. The regulatory fees in the Schedule for Mass Media services generally include broadcast licensees, permittees and other regulatees. As discussed above, we have exempted noncommercial educational broadcasters from regulatory fees. To the extent possible, we intend to use the Bureau's computer data bases to verify the identity of regulatees subject to regulatory fees in the Mass Media services.

78. Several commenters contend that the statutory fee schedule is unfair to certain categories of licensees in the Mass Media services and complain that the schedule fails to impose a fee on other categories of regulatees. De La Hunt Broadcasting Corporation and the Broadcasting Associations believe that radio broadcaster licensees should be assessed regulatory fees on a market-size basis, in a manner similar to the fees mandated for television stations. The NAB urges that we adjust the schedule for radio broadcast licensees when we consider appropriate fees for future years. Further, the Broadcasting Associations contends that we should not include a television station as being in a major market unless that station serves the metropolitan area of that particular market.

79. We decline to consider any adjustments to the schedule for FY 1994 for radio and television stations. As we explained

above, we believe that Congress did not intend that we adjust any aspect of the fee schedule it established for FY 1994.

Interested parties may submit comments, however, addressed to modifying the method for assessment of radio and television broadcasting fees at the time we issue our proposed schedule of fees for FY 1995.

2. Television Stations

80. Section (9)(g) provides that the regulatory fee charged a television licensee will be determined by the size of its market. We recognized in our NPRM that Arbitron no longer provides television rating information. However, no party has proposed that we rely on another mechanism for determining market size. Therefore, we will utilize Arbitron's ADI rankings for 1993-1994 for the determination of television markets for assessing our FY 1994 regulatory fees since it appears, at this time, that these are the most familiar and readily available tools for determining the relative ranking of television markets.

81. KBS License L.P. (KBS) and the NAB argue that satellite television stations should not be subject to the same regulatory fee payment as fully powered television stations. The NAB contends that satellite television stations should be assessed as if they were television translator stations. KBS argues that our proposal to assess fees for satellite stations at the same level as full powered stations is inconsistent with section 9. First, in KBS's view, Congress established regulatory fees for commercial television stations, and did not set any fee requirement for satellite television stations. Second, according to KBS, Congress intended the Commission to charge licensees fees based on the regulatory burden they impose, yet satellite stations require much less regulatory oversight than full powered stations. Also, KBS contends that the fee would place an unfair and illogical burden on small market licensees who use satellite television stations to reach remote areas in their markets.

82. Section 9(g)'s fee schedule establishes specific fees for commercial television stations. These fees are to be assessed against a licensee solely on the basis of the market in which the station operates. The text of the schedule makes no distinction between commercial stations that are fully operational and those that are satellite stations. It is also clear that these satellite stations are not "translator stations," which are also listed in the schedule. TV translator stations are low-powered facilities that rebroadcast the signals of a full service television broadcast station, including a satellite station, and are afforded secondary status vis-a-vis full service television stations. Also, unlike satellite stations, they are not subject to the technical, operational and program service obligations that are imposed on all full service broadcast stations,

including satellite stations.³² Consequently, we find that in establishing fees for commercial stations, Congress assessed the same fee for both commercial fully operational and commercial satellite television stations. We therefore reject KBS's argument that Congress failed to establish a fee for television satellite stations. However, there are anomalies concerning the treatment of satellite stations that are a matter of concern to us and that we believe would be appropriate for consideration on a case-by-case basis. First, where a licensee would be required under the fee schedule to pay a higher fee for its satellite station than for the parent station, we will entertain petitions to reduce the satellite station's fee to the same amount as the fee due for the parent station. In such a case, the licensee would be required to submit with its request an amount no greater than the fee due from the parent station. Second, in any situation in which payment of the fee would cause a diminishment of a licensee's ability to continue to serve the public, we will entertain requests for waiver or reduction of the fee upon an appropriate showing. In this instance, the licensee would not be obligated to pay the fee until resolution of its waiver request.

83. KBS and the NAB may submit comments in our future proceeding to establish regulatory fees for FY 1995, supporting their positions concerning the need to distinguish between satellite and fully operational stations when assessing regulatory fees. As explained above, for FY 1994, we shall make no adjustments to Congress' fee schedule pursuant to section 9(b).

3. Broadcast Auxiliary

84. The Society of Broadcast Engineers, Inc. (SBE) believes that broadcast auxiliary facilities, such as remote pick-up stations, and aural, television and low power auxiliary stations, should not be subject to any regulatory fee. SBE explains that there is no justification to apply a regulatory fee to these facilities since they are essentially self-regulating and impose little burden on our resources. As indicated above, we shall not modify any of section 9(g)'s fee requirements for FY 1994, but SBE may raise these issues in future proceedings.

4. ITFS and DBS

85. Finally, the Joint Parties contend that we should amend the fee schedule to add several services not subject to fees for FY

³² Unlike other full service television broadcast stations, satellite stations have not been subject to the Commission's multiple ownership restrictions. However, that distinction is currently under review in our Second Further Notice of Proposed Rulemaking in MM Docket No. 87-8, 6 FCC Rcd 5010 (1991).

1994. These services include the commercial offering of Instructional Television Fixed Services (ITFS) and Direct Broadcast Satellite Service (DBS). We decline the Joint Parties' request to add these services to the schedule for 1994 since Congress did not provide us the authority to add any service to the schedule for FY 1994. Moreover, we are aware that ITFS is a predominantly nonprofit service with limited commercial use and, further, that DBS is not expected to become operational prior to the time for calculating fee payments for FY 1994.³³ To the extent that the Joint Parties wish to renew their arguments concerning the inclusion of these services for future years, they may do so when we consider our fee payment schedule for FY 1995.

C. Common Carrier Bureau

86. Most common carrier regulatory fees are based on the size of a regulatee's communications operation as determined by its number of stations, subscribers, access lines, or antennas. We intend to rely upon the Common Carrier Bureau's licensing data bases to confirm the identity and fee amount for most radio common carriers to the extent possible. We also intend to perform periodic, random audits to determine whether individual regulatees have reported the correct multiplier.

1. Cellular and Public Mobile Licensees

87. The Personal Communications Industry Association (PCIA) states that we should define the term "subscriber" as it applies to Part 22 and personal communications services licensees. PCIA suggests that we require Part 22 licensees to pay their fees based on the number of customers on their billing lists and urges that we permit Part 22 licensees to submit their fee payments pursuant to systemwide aggregations of subscribers. Also, PCIA contends that we should permit paging licensees to calculate their fees by aggregating their total subscribers, rather determining their fee payments by call sign, as required by section 9(g), and to submit one instrument of payment per carrier

³³ The Joint parties point out that the fee schedule contains no explicit fee requirement for Multipoint Distribution Service (MMDS). However, our schedule, modeled on the schedule contained in section 9(g) of the Act, explicitly requires the payment of a regulatory fee by Domestic Public Fixed licensees, operating under Part 21 of our rules. Since MMDS is a Part 21 service, it is fully subject to the regulatory fee prescribed for Part 21 licensees.

system.³⁴

88. Our rules do not define a mobile service subscriber. For purposes of calculating regulatory fees, we will define a subscriber to a mobile service as an individual or entity authorized by the mobile service provider to operate under its blanket license in exchange for monetary consideration. Further, any Part 22 licensee may submit a single, aggregate payment to cover the regulatory fees due for each of its individual systems. However, each individual system and service should be clearly enumerated on the payor's FCC Form 159 accompanying the fee payment. PCIA may submit its proposal to modify the method for calculating fee payments by paging licensees in our proceeding for establishing fees for FY 1995.

2. Air-Ground Radiotelephone Service

89. Claircom Communications Group, L.P., GTE and In-Flight Phone Corporation request clarification of the definition of "subscriber" in section 9(g) when applied to the payment of regulatory fees for the Air-Ground Telephone Service. Unlike conventional telephone service, subscribers to that service, usually operators of commercial aircraft, lease their service for the purpose of making it available to their own customers. There is no contractual relationship between the air-ground service operator and the end user of its service. Consequently, as suggested by the parties, we will treat the operator of an aircraft in which its service is installed as the subscriber to the service and charge the fee based upon the number of transceivers leased by the operator. Similarly, licensees in the air-ground service should include in their total fee a payment on a transceiver basis for service they provide to users other than commercial aircraft, such as private aircraft.

3. Space Stations

90. Comsat General Corporation (Comsat), GE American Communications, Inc. (GE American), Orbital Communications Corporation (Orbital) PanAmSat, L.P. (Panamsat) and Starsys Global Positioning, Inc. (Starsys) have submitted comments addressed to our proposals concerning the requirements of satellite licensees to submit regulatory fees. Comsat and GTE state that the regulatory fee for a geosynchronous orbit space station is excessive. Comsat argues that the fee requirement should be lowered for FY 1994 because these systems no longer require the regulatory attention they received in their earlier

³⁴ PCIA also requests that we recalculate the regulatory fee for CMRS for FY 1995. PCIA may submit its comments regarding the fee for CMRS in the proceeding we establish to prescribe fees for FY 1995.

developmental stage. It argues that the fee also is a disincentive to maintaining older and underutilized satellites in orbit for back up purposes and is anticompetitive and anti-consumer. As we have stated earlier, we shall not adjust the schedule of fees that Congress has enacted for the assessment of fees for FY 1994. Comsat may submit its comments in the future proceeding that we will initiate in order to establish appropriate fees for FY 1995.

91. We also received comments from Orbital and a reply comment from Starsys concerning when a satellite space station becomes subject to the fee requirement. Section 9(g) requires that the payment of a regulatory fee by the operator of any "operational" space station in geosynchronous orbit. We agree with the commenters that a satellite does not become "operational" immediately upon its launch. Therefore, as proposed by the commenters, we will consider a space station in geosynchronous orbit to be subject to the fee when it has been certified by its operator to be operational in accordance with section 25.120(d) of the rules. This certification indicates that the satellite has been placed in its authorized orbit and is operating in the authorized frequency bands at the authorized power levels. Similarly, a space station or system will be considered to have terminated its operation when its licensee certifies to us that the satellite has ceased to operate.

92. Also, we will consider a space system in low earth orbit (LEO) subject to the fee payment when its first satellite becomes operational even though all its space stations are not yet operational. Similar to our treatment of geosynchronous satellites, the system will become subject to a fee payment upon the certification by the licensee that the operations of the first satellite in its system conform to the terms and conditions of its authorization pursuant to 47 C.F.R. § 25.120(d).

4. Earth Stations

93. AMSC Subsidiary Corporation contends that no payment of regulatory fees for earth stations and mobile terminals should be required until their related satellite system is operational.³⁵ However, we observe that the licensing of satellite earth stations is entirely separate from the licensing of space stations and that fixed-satellite earth stations are generally licensed to operate with any and all domestic satellite systems located in that portion of the geostationary orbit for which the earth station has been frequency coordinated. It is common practice for a satellite system to provide preliminary service

³⁵ AMSC states that its satellite will be launched in December 1995, but that its earth and mobile stations will likely be licensed before September 1994.

via unrelated space stations before its own stations are launched and operational.

94. We will require the licensee of an earth station to pay a fee once it has certified that the earth station's construction is completed. However, in those rare instances in which a license limits an earth station's operational authority to a particular satellite system and that system is not operational on the date for calculating the fee, the fee will not be due until the first satellite of the related system becomes "operational" within the meaning of our fee rules.

5. Interexchange and Local Exchange Carriers

95. Generally, the comments of local exchange carriers (LECs) and interexchange carriers (IXCs) raise issues concerning the basis upon which they are to calculate their fee payments, the need for a definition of the term "subscriber," and a date for calculating their fee payments.³⁶

96. We will adopt our proposal to permit the holding company of local exchange carriers to aggregate fee payments due by its operating companies and submit a single payment to cover the fee requirements of its subsidiaries.³⁵ We have considered the proposals of several commenters, including Ameritech, Nynex and SWB, that LECs submit fees based upon ARMIS data. However, ARMIS data is required from comparatively few LECs and we would still need a mechanism to calculate the fees due from the vast majority of LECs. Therefore, we have decided that all LECs are to calculate the amount of their regulatory fees based upon the number of working loops as described in section 36.611 of our rules, governing the submission of Information to the National Exchange Carrier Association (NECA).³⁶ We believe that this

³⁶ Allnet and MCI point out that resellers and pay telephone operators are not among those regulatees listed in the fee schedule. We will review whether these entities should be directly subject to a fee payment in the course of our proceeding to determine regulatory fees for FY 1995.

³⁵ We agree with Allnet that entities operating as both LECs and IXCs are subject to a regulatory fee for both categories of service. However, as GTE suggests, we will require a carrier to submit only a single payment when a single commonly-owned line serves as both a presubscribed line and an access line.

³⁶ NECA has proposed to process regulatory fees on behalf of its pooling exchange carriers and to submit their consolidated fees to our lockbox bank in a single instrument of payment. We have no objection to NECA's submission of the fee on behalf of its pooling exchange carriers or others. However, we remind

definition will be simple to administer since the LECs currently compile subscriber loop data, and it will provide a consistent formulation for the assessment of fees from all LECs.³⁷ As noted, for FY 1994, we will require LECs to calculate their fee payments for FY 1994 as of December 31, 1993.³⁸

97. In the NPRM, we invited comments concerning section 9(g)'s assessment of regulatory fees from IXC's on a subscriber basis. In response, AT&T, opposed by Wiltel, Inc., argues that fee payments by IXC's should be based on gross revenues, not by the number of a carrier's subscribers. We decline to reach the merits of AT&T's argument at this time because, as indicated above, we shall not adjust the fee schedule for FY 1994. Any reformulation of the basis upon which IXC's are to base their fee payments would constitute a substantial adjustment to the fee schedule that Congress enacted. IXC's shall file fees based on the total number of common lines presubscribed to that IXC as determined pursuant to section 69.116 of the rules. 47 C.F.R. § 69.116. AT&T may submit its views concerning the appropriate method of assessing fees from IXC's in our proceeding to establish regulatory fees for FY 1995.

6. International Bearer Circuits

98. Panamsat requests clarification concerning the assessment of

entities subject to the payment of a regulatory fee that the regulatee, not an agent, such as NECA, is responsible for ensuring that the payment is made and that it is subject to penalty for failure to submit the entire fee due in a timely manner. LECs will be expected to pay their fees based upon the number of access lines as determined by NECA. In case of a dispute between a carrier and NECA concerning the carrier's line count as of December 31, 1993, NECA will certify its calculation of the carrier's line count and the basis for its calculation.

³⁷ We expect competitive access providers (CAPs) to submit fee payments based upon their line count as required under section 9(g). Ameritech, GTE and other interested parties may submit their views on the proper method of assessing regulatory fees for CAPs in our proceeding to establish fees for FY 1995.

³⁸ Several LECs, including Ameritech, GTE, NYNEX and Bell South, opposed by Allnet, contend that their regulatory fee payments qualify for exogenous treatment under the price cap rules and ask that we allow their regulatory fee expense to be charged directly to their subscribers. Their request is beyond the scope of this proceeding. LECs seeking to charge their regulatory fees directly to subscribers should petition for a waiver of the Commission's rules.

regulatory fees for international circuits. Section 9 (g)'s Schedule provides that the fee is to be computed "per 100 active 64 KB circuits or equivalent." The fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for circuits sold on an indefeasable right of use (IRU) basis or leased in their private submarine cables to any customer of the private cable operator. In the NPRM, we stated that the fee would be based upon active 64 KB circuits, or equivalent circuits. Under this formulation, 64 KB circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 KB circuit equivalent of larger bit stream circuits. For example, the 64 KB circuit equivalent of a 2.048 MB circuit is 30 64 KB circuits. Analog circuits such as 3 and 4 KHz circuits used for international services are also included as equivalent 64 KB circuits. However, circuits derived from 64 KB circuits such as circuits derived by the use of digital circuit multiplication systems are not equivalent 64 KB circuits. Such circuits are not subject to fees. Only the 64 KB circuit from which they have been derived will be subject to payment of a fee. For analog television channels we will assess fees as follows:

Analog Television Channel Size in MHz	No. of Equivalent 64 KB Circuits
36	630
24	288
18	240

D. Cable Services

99. Several commenters contend that the fee prescribed for cable television services should be paid on an exact per subscriber count rather than per 1,000 subscribers, as we proposed.³⁹ These commenters argue that the latter formulation would cause small cable systems to pay a disproportionately high regulatory fee. For example, a cable system with 100 subscribers would be subject to the same fee as a system with 1,000 subscribers.

100. The text of section 9(g)'s fee schedule provides for the assessment of a fee for cable television systems at the rate of \$370.00 per 1,000 subscribers. Upon further consideration, we agree with the commenters that Congress did not intend that this provision required that a system pay its fee as if it served

³⁹ These commenters include the United States Small Business Administration, Cable Services, Inc., the Cable Telecommunications Association, the National Cable Television Associations, Nationwide Communications, Inc. and the Small Cable Business Association.

1,000 subscribers when in fact it provides services to fewer than 1,000 subscribers.⁴⁰ Following this formulation to its logical extreme would impose on small cable systems a disproportionate burden of the aggregate cable service regulatory fee since it would result in the assessment of larger fees upon small systems, particularly those with fewer than 1,000 subscribers. Thus, we believe Congress' purpose was to require cable systems to formulate their fee based on the schedule's assessment of \$370.00 per 1000 subscribers, but to pay the fee on an exact per subscriber count. Payment of the cable fee on the basis of the exact count of a system's subscribers will eliminate the inequity perceived by the commenters.

101. NCTA and Nationwide support our proposal to permit cable systems to submit their regulatory fees on the basis of the aggregate fee payable by commonly owned systems.⁴¹ Therefore, we will permit commonly owned cable systems to combine their fee payments for submission to our lockbox bank. Finally, for purposes of calculating the fee due from cable operators, we will adopt the definition of a cable subscriber, including bulk rate subscriber, used for FCC Form 325. See FCC Form 325 Instructions (Page 3).

V. Amendments to Application Fee Rules

102. In addition to the new rules for regulatory fees, we are revising several sections of our rules governing fees associated with applications and other filings. Filing fees are required pursuant to section 8 of the Communications Act and are administered separately from the regulatory fees authorized under section 9.⁴²

⁴⁰ We reject the Joint Commenters' argument that the regulatory fee for cable systems be reduced when any of a system's channels are made available to competitors pursuant to 47 U.S.C. § 532. Congress has based the regulatory fee for cable systems upon the number of subscribers served, not the number of a system's channels available for the system's direct use.

⁴¹ NCTA, the Joint Commenters and Continental request authority for cable systems to pass through their regulatory fees to cable television subscribers as external costs. Only those items currently itemized in the rule as external costs may be passed through to cable subscribers. Regulatory fees are not among the enumerated items and the pass through process is not the subject of this proceeding. Therefore, this matter should be addressed separately.

⁴² We will publish in the FCC Record actions, including actions taken on delegated authority, related to the application and regulatory fee rules that have precedential value.

A. Fees for Resubmitted Applications

103. We have amended section 1.1107(d) of the rules, as proposed. Section 1.1107(d) governs fee payments relating to applications and other filings when resubmitted in the appropriate timeframe following a staff request for additional or corrected information. We have amended section 1.1107(d) to require persons submitting applications or other filings that have been returned for additional information or corrections and that do not require any additional fees to submit these applications and other filings directly to the Bureau/Office making the request. Applications requiring additional fees must be filed at our lockbox bank with the remittance for the entire additional amount due. In the event that the staff discovers, within 30 days after the resubmission, that the additional fee payment was not submitted, the application or other filing will be dismissed as deficient and the previously submitted section 8 fee payment will be retained under this proposal. A new fee payment (covering the entire amount of the revised fee) will be required with any future filing of the application or other filing. However, if the staff discovers the fee payment deficiency more than thirty days subsequent to the resubmission, the application or other filing will be retained, but a 25 percent late fee will be assessed on the deficient amount even if we have completed our action on the application or other filing involved.

B. Stale Checks

104. Our lockbox bank will not process a personal or business check dated more than six months prior to its submission. Therefore, we have revised section 1.1108(a) of the rules to make clear that these "stale" checks will not be accepted as fee payments. Under this revision, we will not accept any instrument of payment dated more than six months prior to the date of its filing with the lockbox bank, and we will return to the filer any application or other filing submitted with a stale payment instrument. Further, we will not accept any third party checks (i.e., checks with the name of any third party as the maker or endorser).

C. Receipts

105. Our practice with regard to stamped receipts for application fee payments is to furnish receipts only upon specific request of the submitter rather than to provide receipts automatically for all fee payments received. We are clarifying these procedures by amending section 1.1108 of the rules. In order to obtain a receipt for a fee payment, section 1.1108 will require that the application and fee package include a copy of the first page of the application or other filing, clearly marked "copy," submitted expressly for the purpose of serving as a

receipt of the filing. The copy should be the top document in the fee payment package. The staff will date-stamp the copy immediately and provide it to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelop of sufficient size to contain the date-stamped copy of the application. We will provide a receipt for regulatory fee payments, upon request, if we are furnished with a copy of Form 159 or the first page of an application in the private radio services accompanying the fee payment and the request otherwise conforms with the procedures we have adopted for receipts of application fees.

D. Electronic Application Fee Payments

106. We are adopting rules regarding the submission of regulatory fee payments by electronic means. Revised sections 1.1107 and 1.1108 of the rules allow the payment of application and other filing fees by electronic means, although our system for electronic payment is not yet fully in place. In our NPRM, we stated our concern about matching electronically paid fees with submitted hard-copy applications.⁴³ If a party chooses to pay its application filing fee electronically, we will require that the entity follow existing procedures for filing its application at the lockbox bank. However, in lieu of the current payment methods, the party will indicate on its remittance advice (FCC Form 159 or the underlying application form with fee information incorporated therein) that payment is being sent to the bank electronically. The electronic payment must be made on or before the day the application is filed. Upon receipt of an application, the bank will confirm that a fee payment has been received electronically. If the electronic payment is not received on the filing date, the application or request will be returned without processing. We believe these procedures are necessary to ensure the most efficient processing of electronic fee payments (when authorized) and applications or other filings. Finally, during the pilot phase of our electronic payment program, regulatees will be required to obtain our prior authorization before making electronic fee payments. (See paragraphs 56 and 57, above.)

E. One Check/One Application Rule

107. We are modifying our rules to allow the use of a single payment instrument or method to cover multiple applications for the same or different applicants, so long as all the applications are filed at the same time at the same lockbox. Any applicant desiring to pay for multiple regulatory/application filings in

⁴³ We note that some parts of the Commission are currently experimenting with electronic filing of applications.

the same lockbox with a single payment instrument, or when paying by credit card, must also complete FCC Form 159, FCC Remittance Advice. Each item must be listed separately on the form with its own Payment Type Code. If another space is needed for multiple filings, the applicant must use FCC Form 159-C, FCC Remittance Advice Continuation Sheet.⁴⁴

F. Payment by Cashier's Check

108. To ensure that payment instruments will result in a final payment being made to the Commission, we believe that our cashier's check safeguard should be strengthened. Accordingly, as proposed, when a person or organization has, on one or more occasions, submitted a payment instrument on which final payment is not received (and is not excused by bank error), we will immediately notify the party that future fee payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by a cashier's check (or cash), that party's other payment instrument will not be accepted and its application or other filing will be returned. 47 C.F.R. § 1.1108(d)(1)(i); see also 47 C.F.R. § 1.1110(a).

G. Filing Locations for Petitions and Applications for Review

109. We have revised sections 1.1109(a)(3) and 1.1115 to clarify that any petition for reconsideration, application for review, and any petition for waiver or deferral of a fee payment, accompanied by an application or regulatory fee payment, must be submitted to our lockbox bank. If no fee payment is required and the matter is within the scope of either the application or regulatory fee rules, the request should be filed with the Secretary and clearly marked to the attention of the Managing Director.

VI. Confidentiality

110. The Cellular Telecommunications Industry Association, GTE and Southwestern Bell Corporation urge that we amend section 0.457 of our rules to safeguard the confidentiality of data submitted with regulatory fees, including fee amounts that are calculated on a per line or subscriber basis. 47 C.F.R. § 0.457. At this time, we will not amend our rules to include a provision affording automatic confidentiality for information submitted with regulatory fees. Generally, regulatees are required to submit very little data with their fee payments and it is premature for us to determine whether the disclosure of any

⁴⁴ All non-private radio section 9 regulatory fee payors must use FCC Form 159/159C when submitting single or multiple regulatory fees.

information submitted, including the fee amounts calculated on a per subscriber basis, will warrant the protection afforded by section 0.457. Payments of regulatory fees may be accompanied by requests for confidentiality pursuant to section 0.459 of the Commission's rules. 47 C.F.R. § 0.459.

VII. Final Regulatory Analysis

111. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action:

112. This Report and Order adopts the Schedule of Regulatory Fees enacted by Congress for the assessment and collection of the Commission's regulatory fees for FY 1994 and adopts rules to govern the assessment and collection of regulatory fees for FY 1994 and future years. The rules, as required by Congress, include provisions for the advance payment of small fees, the payment of large fees by installment, and procedures for waiver, reduction and deferral of fees by regulatees that demonstrate that payment of the fee would be a financial hardship, as well as penalties for late or nonpayment of fees.

II. Summary of Comments raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

113. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments urging that cable television system operators be permitted to pay their fees on a per subscriber basis (\$.37) rather than in increments of 1,000 subscribers (\$370.00) or any portion thereof. The Report and Order adopts the SBA's proposal.

III. Significant Alternatives Considered:

114. The Notice of Proposed Rulemaking in this proceeding offered many proposals, including reliance on the Schedule of Regulatory Fees as established by Congress in section 9(g) of the Communications Act, 47 U.S.C. § 159(g), exemptions from regulatory fees, installment payments for large fees, advance payments for small fees, payment procedures, including payment by electronic transfer and credit card, procedures for waiver, reduction and deferment of fees, and penalties for late or nonpayment of fees. Our proposals to adopt the service categories and fee amounts in Congress' fee schedule and for waiver, reduction and deferment of fees were discussed by many commenters. Fireweed and the Joint Commenters urged that we amend the fee schedule to reduce the fees and add services subject to a fee payment. NAB and the State Broadcasters urged that we modify our proposed procedures for requesting a waiver, reduction or deferment of a fee payment. Upon review, we

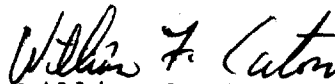
affirmed that Congress intended that we utilize section 9(g)'s fee schedule for FY 1994. However, we adopted more flexible procedures for obtaining a waiver, reduction or deferment of the fees in order to afford more regulatees the opportunity to obtain a waiver, reduction or deferment of the fees and we clarified the showing required for adjustment of a fee based on financial hardship.

VIII. ORDERING CLAUSES

115. Accordingly, IT IS ORDERED that the rule changes as specified below ARE ADOPTED.

116. IT IS FURTHER ORDERED that the rule changes made herein will become effective 30 days after publication in the Federal Register. This action is taken pursuant to sections 4(i), 4(j), 8, 9 and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 158, 159, 303(r).

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

RULE CHANGES

47 C.F.R. Parts 0 and 1 are amended as follows:

PART 0, COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Sec. 0.231 is amended by revising paragraph (c) to read as follows:

§ 0.231 Authority delegated.

* * * * *

(c) The Managing Director, or his designee, upon securing concurrence of the General Counsel, is delegated authority to act upon requests for waiver, reduction or deferment of fees, establish payment dates, and issue notices proposing amendments or adjustments to the fee schedules established under Subpart G, Part 1, of this chapter.

* * * * *

3. Sec. 0.406 is amended by revising paragraph (b) (2) to read as follows:

§ 0.406 The rules and regulations.

* * * * *

(b) * * *

(2) Part 1 of this Chapter, practice and procedure. Subpart A of part 1 contains the general rules of practice and procedure. Except as expressly provided to the contrary, these rules are applicable in all Commission proceedings and should be of interest to all persons having business with the Commission. Part 1 of this Chapter also contains certain other miscellaneous provisions. Subpart B contains the procedures applicable in formal hearing proceedings (see § 1.201). Subpart C contains the procedures followed in making or revising the rules or regulations. Subpart D contains rules applicable to applications for licenses in the Broadcast Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting upon such applications, and certain other

matters. Subpart E contains general rules and procedures applicable to common carriers. Additional procedures applicable to certain common carriers by radio are set forth in part 21. Subpart F contains rules applicable to applications for licenses in the Private Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting on such applications, and certain other matters. Subpart G contains rules pertaining to the application processing fees established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99-272) and also contains rules pertaining to the regulatory fees established by the Omnibus Budget Reconciliation Act of 1993 (Pub.L. 103-66). Subpart H, concerning ex parte presentations, sets forth standards governing communications with commission personnel in hearing proceedings and contested application proceedings. Subparts G and H will be of interest to all regulatees, and subpart H will, in addition, be of interest to all persons involved in hearing proceedings.

* * * * *

Part 1 Practice and Procedure

4. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552; 21 U.S.C. 853a, unless otherwise noted.

5. Sec. 1.742 is revised to read as follows:

§ 1.742 Place of filing, fees and number of copies.

All applications which do not require a fee shall be filed at the Commission's main office in Washington, D.C., Attention: Office of the Secretary. Hand-delivered applications will be dated by the Secretary upon receipt (mailed applications will be dated by the Mail Branch) and then forwarded to the Common Carrier Bureau. All applications accompanied by a fee payment should be filed with the Commission's lockbox bank in accordance with §1.1105 of the Schedule of Fees. The number of copies required for each application and the nonrefundable processing fees and any applicable regulatory fees (see Subpart G) which must accompany each application in order to qualify it for acceptance for filing and consideration are set forth in the rules in this chapter relating to various types of applications. However, if any application is not of the type covered by this chapter, an original and two copies of each such application shall be submitted.

* * * * *

6. Sec. 1.1108 is amended by revising paragraphs (a) through and

(d) to read as follows:

§ 1.1108 Payment of charges.

(a) Electronic fee payments do not require the use of a FCC Form 159, Remittance Advice. An electronic fee payment must be made on or before the day the application and appropriate processing form are filed.

(b) The schedule of fees for applications and other filings lists those applications and other filings that must be accompanied by a FCC Form 159, Remittance Advice. A separate FCC Form 159 will not be required once the information requirements of that form (payor information) is incorporated into the underlying application form. We anticipate completing this change on or before September 30, 1997.

(c) Applications and other filings that are not submitted in accordance with these instructions will be returned as unprocessable.

NOTE: This requirement for the simultaneous submission of fee forms with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. See § 1.1117 of this subpart.

(d) Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. Those applications not requiring an additional fee should be resubmitted directly to the Bureau/Office requesting the additional information. The original fee will be forfeited if the additional information or corrections are not resubmitted to the appropriate Bureau/Office by the prescribed deadline. If an additional fee is required, the original fee will be returned and the application must be resubmitted with a new remittance in the amount of the required fee to the Commission's lockbox bank. Applicants should attach a copy of the Commission request for additional or corrected information to their resubmission.

(1) If the Bureau/Office staff discovers within 30 days after the resubmission that the required fee was not submitted, the application will be dismissed.

(2) If after 30 days the Bureau/Office staff discovers the required fee has not been paid, the application will be retained and a 25 percent late fee will be assessed on the deficient amount even if the Commission has completed its action on the application. Any Commission actions taken prior to timely payment of these charges are contingent and subject to recession.

* * * * *

7. Sec. 1.1109 is amended by revising paragraphs (a), (d) and (f) to read as follows:

§1.1109 Form of payment.

(a) Fee payments should be in the form of a check, bank draft, or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa or MasterCard credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless the credit card section of FCC Form 159 is completed in full. The Commission discourages applicants from submitting cash and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient. Third party checks (i.e., checks with a third party as maker or endorser) will not be accepted.

(1) Specific procedures for electronic payment will be announced by Public Notice. Applicants must submit a written request to the Commission for authorization to make electronic payments of a fee for applications and other filings, as follows.

(2) No electronic payment of an application fee will be accepted unless the payor has obtained the written authorization of the Commission to submit application fees electronically. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing and the fee payment.

(3) Payments by wire transfer will be accepted. Prior to making a payment by wire, the payor shall obtain the approval of the Managing Director or his designee. A completed FCC Form 159 shall be submitted to the Managing Director or his designee prior to initiating the wire transfer.

* * * * *

(d) The Commission may require payment of fees with a cashier's check upon notification to an applicant or filer or prospective group of applicants under the conditions set forth below.

(1) Payment by cashier's check may be required when a person or organization has made payment, on one or more occasions with a payment instrument on which the Commission does not receive final payment and such failure is not excused by bank error.

(2) The Commission will notify the party in writing that future payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by cashier's check, the party's payment will not be accepted and its application or other filing will be returned.

* * * * *

(f) The Commission will furnish a stamped receipt of an application only upon request. In order to obtain a stamped receipt for an application (or other filing), the application package must include a copy of the first page of the application, clearly marked "copy", submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the package. The copy will be date-stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date stamped copy of the application. No remittance receipt copies will be furnished.

* * * * *

8. Sec. 1.1110 is amended by revising paragraph (a) to read as follows:

§ 1.1110 Filing locations.

(a) Except as noted herein, applications and other filings, with attached fees and FCC Form 159, must be submitted to the locations and addresses set forth in §§ 1.1102 through 1.1105 of the Commission's rules.

(1) Tariff filings shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. On the same day, the filer should submit a copy of the cover letter, the FCC Form 159, and the appropriate fee to the Commission's lockbox bank at the address established in § 1.1105.

(2) Bills for collection will be paid at the Commission's lockbox bank at the address for the appropriate service as established in §§ 1.1102 through 1.1105, as set forth on the bill sent by the Commission. Payments must be accompanied by the bill and a FCC Form 159 to ensure proper credit.

(3) Petitions for reconsideration or applications for review of fee decisions pursuant to § 1.1116(b) of this subpart must be accompanied by the required fee for the application or other filing being considered or reviewed.

(4) Applicants claiming an exemption from a fee requirement for an application or other filing under 47 U.S.C. § 158(d)(1) or § 1.1112 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying, except that request for waiver accompanied by a tentative fee payment should be filed at the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1105.

* * * * *

9. Sec. 1.1116 is amended by revising the section heading and paragraph (c) to read as follows:

§1.1116 Petitions and applications for review.

* * * * *

(c) Petitions for waivers, deferrals, fee determinations, reconsideration and applications for review will be acted upon by the Managing Director. Petitions and applications for review submitted with a fee must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1105. If no fee payment is required, and the matter is within the scope of the fee rules, the petition or application for review should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

* * * * *

10. Sec. 1.1151 is added to read as follows:

§ 1.1151 Authority to prescribe and collect regulatory fees.

Authority to impose and collect regulatory fees is contained in title VI, § 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), enacting section 9 of the Communications Act, 47 U.S.C. 159, which directs the Commission to prescribe and collect annual regulatory fees from designated regulatees in order to recover the costs of certain of its regulatory activities in the private radio, mass media, common carrier, and cable television services.

11. Sec. 1.1152 is added to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for private radio service.

Exclusive use services (per license)

1. Land Mobile (Above 470 MHz, Base Station & SMRS) (47 CFR, Part 90)	\$16.00	FCC, Land Mobile P.O. Box ____* Pittsburgh, PA 15251-5---
2. Microwave (47 CFR Pt 94)	\$16.00	FCC, Microwave P.O. Box ____* Pittsburgh, PA 15251-5---
3. Interactive Video Data Service	\$16.00	FCC, IVDS P.O. Box ____* Pittsburgh, PA 15251-5---
Shared Use Services	\$ 7.00	FCC, Shared Use Services, P.O. Box ____* Pittsburgh, PA 15251-5---
Amateur Vanity Call Signs	\$ 7.00	FCC, Amateur Vanity Call Signs, P.O. Box ____*, Pittsburgh, PA 15251-5---

NOTE: Refer to Private Radio Service Fee Filing Guide for appropriate Post Office Box.

12. Sec. 1.1153 is added to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

AM Radio (47 CFR, Part 73)

1. Class D Daytime	\$250.00	FCC, AM Branch
2. Class A Fulltime	\$900.00	P.O. Box 358835
3. Class B Fulltime	\$500.00	Pittsburgh, PA
4. Class C Fulltime	\$200.00	15251-5835
5. Construction Permits	\$100.00	

FM Radio (47 CFR, Part 73)

1. Classes C, C1, C2, B	\$900.00	FCC, FM Branch
2. Classes A, B1, C3	\$600.00	P.O. Box 358835
3. Construction Permits	\$500.00	Pittsburgh, PA
		15252-5835

TV (47 CFR, Part 73)**VHF Commercial**

1. Markets 1 thru 10	\$18,000	FCC, TV Branch
2. Markets 11 thru 25	\$16,000	P.O. Box 358835
3. Markets 26 thru 50	\$12,000	Pittsburgh, PA
4. Markets 51 thru 100	\$ 8,000	15251-5835
5. Remaining Markets	\$ 5,000	
6. Construction Permits	\$ 4,000	

UHF Commercial

1. Markets 1 thru 10	\$14,400	FCC, UHF Commercial
2. Markets 11 thru 25	\$12,800	P.O. Box 358835
3. Markets 26 thru 50	\$ 9,600	Pittsburgh, PA
4. Markets 51 thru 100	\$ 6,400	15251-5835
5. Remaining Markets	\$ 4,000	
6. Construction Permits	\$ 3,200	

**Low Power TV, TV Translator,
& TV Booster (47 CFR, Part 74)**

\$ 135

FCC, Low Power
P.O. Box 358835
Pittsburgh, PA
15251-5835

Broadcast Auxiliary

\$ 25

FCC, Auxiliary
P.O. Box 358835
Pittsburgh, PA
15251-5835

International (HF) Broadcast

\$ 200

FCC, International
P.O. Box 358835
Pittsburgh, PA
15251-5835

13. Sec. 1.1154 is added to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

Radio Facilities

1. Cellular Radio (per 1,000 subscribers)	\$ 60	FCC, Cellular
2. Personal Communications	\$ 60	P.O. Box 358835
3. Space Station (geo orbit)	\$65,000	Pittsburgh, PA
4. Space Station (low earth)	\$90,000	15251-5835
5. Public Mobile (per 1,000)	\$ 60	
6. Domestic Public Fixed	55	
7. International Public Fixed	110	

Earth Stations

- | | | |
|--|-------|---------------------------------------|
| 1. VSAT & Equivalent C-Band antennas (per 100 antennas) | \$ 6 | FCC, Earth Station
P.O. Box 358835 |
| 2. Mobile Satellite Earth Stations (per 100 antennas) | \$ 6 | Pittsburgh, PA
15251-5835 |
| 3. Less than 9 meters (per 100 antennas) | \$ 6 | |
| 4. 9 Meters or More Transmit/Receive and Transmit Only (per meter) | \$ 85 | |
| Receive Only (per meter) | \$ 55 | |

Carriers

- | | | |
|---|--------|----------------------------------|
| 1. Inter-Exchange Carrier (per 1,000 presubscribed lines) | \$ 60 | FCC, Carriers
P.O. Box 358835 |
| 2. Local Exchange Carrier (per 1,000 access lines) | \$ 60 | Pittsburgh, PA
15251-5835 |
| 3. Competitive Access Provider (per 1,000 subscribers) | \$ 60 | |
| 4. International Circuits (per 100 active 64KB circuit or equivalent) | \$ 220 | |

14. Sec. 1.1155 is added to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services

- | | | |
|--|--------|---|
| 1. Cable Antenna Relay Service | \$ 220 | FCC, Cable |
| 2. Cable TV System (per 1,000 subscribers) | \$ 370 | P.O. Box 358835
Pittsburgh, PA
15251-5835 |

15. Sec. 1.1156 is added to read as follows:

§ 1.1156 Payment of charges for regulatory fees.

Payment of a regulatory fee, required under sections 1.1152 through 1.1155, shall be filed in the following manner:

(a) Payments of regulatory fees shall be submitted with the filing of any application for a new, renewal or reinstatement of a license or other authorization in the private radio services.

(1) Any regulatory fee submitted with an application in the private radio services shall include an advance payment of the total annual regulatory fee payment due for the entire term of the license or other authorization. The amount of the regulatory fee payment due with any application in the private radio service shall be the multiple of the number of years in the entire term of the requested license or other authorization multiplied by the annual fee payment required in the Schedule of Regulatory Fees, effective at the time the application is filed. Except as set forth in §1.1159, advance payments shall be final and shall not be readjusted during the term of the license or authorization, notwithstanding any subsequent increase or decrease in the annual amount of a fee required under the Schedule of Regulatory Fees.

(2) Failure to file the appropriate regulatory fee with an application in the private radio service will result in the return of the accompanying application, including an application for which the Commission has assigned a specific filing deadline.